

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	08CR888
)	
ROD BLAGOJEVICH)	Judge James B. Zagel
)	

**MOTION TO PRODUCE GOVERNMENT WITNESSES
ANTOIN “TONY” REZKO AND STUART LEVINE
FOR PRE-TRIAL INTERVIEWS BY THE DEFENSE**

NOW COMES Rod Blagojevich, by and through his counsel, and respectfully requests that this Court enter an order that government witnesses Antoin “Tony” Rezko and Stuart Levine be made available to the defense for questioning.

Antoin “Tony” Rezko (convicted in 2008) and Stuart Levine (who pleaded guilty in 2006) are both cooperating government witnesses. Both Rezko and Levine may be called to testify at the retrial.

At the first trial, Rezko and Levine featured prominently in the government’s case in chief. Testimony was elicited from a number of witnesses regarding alleged conduct of Rezko and Levine (including witnesses who testified for the government against Rezko at Rezko’s criminal trial). The photographs of Rezko and Levine were shown to the jury during the trial, and Rezko’s photo was displayed during the government’s closing argument. Rezko and Levine however, were never called to

testify. However, it is uncertain whether Rezko and/or Levine will testify in the retrial.

Rezko appeared in court before Hon. Judge St. Eve for sentencing on January 6, 2010 and at that time, the government requested that Rezko not be sentenced at that time. According to media reports, the government indicated “that it was both in the prosecution’s interest and in Rezko’s to delay sentencing and implied that witness decisions still had to be made.” Korecki, Natasha, *Chicago Sun-Times*, January 6, 2011, available at: http://blogs.suntimes.com/blago/2011/01/tony_rezko_in_cards_again_for.html. See also, Breaking News blog, *Chicago Tribune*, January 6, 2011, available at <http://www.chicagobreakingnews.com/2011/01/rezko-sentencing-delayed-until-fall.html> (The Assistant U.S. Attorney “told the court that the government prefers that the sentencing not go forward.”).

Since Rezko and Levine may testify at the retrial and they are crucial witnesses for the prosecution, the defense should be given the opportunity to interview Rezko and/or Levine in preparation for retrial.

These two witnesses are under the control and power of the government, thus rendering them unavailable to the defense. Defense counsel provided written requests to counsel for Rezko and Levine requesting the opportunity to speak to them. Neither request was answered – Rezko and Levine will not speak to the defense.

This Court ruled in the first trial that the Court could and would have ordered that witnesses be made available to the defense upon such a request being

made by defense counsel. In line with this Court's ruling, the defense now seeks such a remedy.

Rezko and Levine are both "peculiarly within the [government's] power to produce" because he has thus far been "physically available to only" the government. Additionally, Rezko and Levine both have "a relationship with the [government] that would in a pragmatic sense make his testimony unavailable to the [defense] regardless of physical availability." Seventh Circuit Pattern Jury Instructions, Instruction 3.24, Committee Comment.

WHEREFORE, Defendant Rod Blagojevich requests that this Court order the production of Antoin "Tony" Rezko and Stuart Levine to the defense for questioning *instanter*. In producing Rezko and Levine to the defense, the defense requests that the interviews occur with only attorneys and/or non-lawyer note-takers for the defense and the witness and his lawyer. Furthermore, the defense requests that there be no time limit on any of the interviews.

Respectfully Submitted,

/s/ Lauren Kaeseberg
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